

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ERIC WARREN,

Plaintiff,

v.

N. NDU,

Defendant.

Case No. 1:21-cv-0120 JLT HBK (PC)

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS IN FULL,  
GRANTING DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT, DISMISSING THE  
SECOND AMENDED COMPLAINT, AND  
DIRECTING THE CLERK OF COURT TO  
CLOSE THE CASE**

(Docs. 25, 33)

Eric Warren seeks to hold Dr. Ndu liable for medical deliberate indifference in violation of his rights arising under the Eighth Amendment. (*See* Docs. 13, 14.) Defendant moved for summary judgment, asserting Plaintiff failed to exhaust his available administrative remedies. (Doc. 25.)

The magistrate judge found there is no dispute of material fact that Plaintiff failed to fully exhaust his administrative remedies as to his claim against Defendant. (Doc. 33.) Specifically, the magistrate judge determined the undisputed evidence demonstrates that Plaintiff's first grievance regarding his foot pain was filed more than a year before Defendant became his primary care physician, and it cannot have put either the institution or Defendant on notice as to any claim against the physician. (*Id.* at 9.) Although Plaintiff submitted a second grievance regarding his foot pain that named Defendant, the magistrate judge found it was undisputed that

1 Plaintiff failed to fully exhaust that grievance to the headquarters level. (*Id.* at 10-11.)

2 Accordingly, the magistrate judge recommended the motion for summary judgment be granted.  
3 (*Id.* at 11.)

4 The Court served the Findings and Recommendations on the parties and notified Plaintiff  
5 that any objections were due within 14 days. (Doc. 33 at 11.) The Court advised Plaintiff that the  
6 “failure to file objections within the specified time may result in the waiver of rights on appeal.”  
7 (*Id.* at 11-12, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Plaintiff did  
8 not file objections, and the time to do so has passed.

9 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this  
10 case. Having carefully reviewed the matter, the Court concludes the Findings and  
11 Recommendations are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 12 1. The Findings and Recommendations, filed on February 13, 2024 (Doc. 33), are  
13 **ADOPTED IN FULL**.
- 14 2. Defendant’s motion for summary judgment (Doc. 25) is **GRANTED**.
- 15 3. Plaintiff’s Second Amended Complaint (Doc. 13) is **DISMISSED** without  
16 prejudice for failure to exhaust administrative remedies.
- 17 4. The Clerk of Court is directed to enter judgment in favor of Defendant and to close  
18 this case.

19  
20 IT IS SO ORDERED.

21 Dated: **March 20, 2024**

  
UNITED STATES DISTRICT JUDGE